

Adopted: January 9, 2026

**AN ORDINANCE TO AMEND CHAPTER 114, TREES, OF THE
MUNICIPAL CODE OF THE TOWN OF HENLOPEN ACRES,
BY REPLACING CHAPTER 114 WITH A NEW CHAPTER 114**

BE IT ORDAINED, by the Commissioners of the Town of Henlopen Acres, in session met, in the manner following to wit:

Section 1. Chapter 114, Trees, of the Municipal Code of the Town of Henlopen Acres, Delaware, as amended be and the same is hereby further amended by deleting Chapter 114 in its entirety and inserting in lieu thereof a new Chapter 114, attached hereto as Exhibit A.

Section 2. If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 3. This Ordinance shall take effect immediately upon its adoption by the Commissioners of the Town of Henlopen Acres.

I, Tiffany Derrickson, Secretary of the Commissioners of the Town of Henlopen Acres, do hereby certify that the foregoing is a true and correct copy of the ordinance adopted by the Board of Commissioners at its meeting held on January 9, 2026, at which a quorum was present and voting throughout and that the same is still in full force and effect.


Secretary

Synopsis: This Ordinance replaces Chapter 114 relating to trees, with a new Chapter 114.

EXHIBIT A

Chapter 114

TREES

§ 114-1.	Intent.	§ 114-7.	Pruning; corner clearance.
§ 114-2.	Tree committee.	§ 114-8.	Dead or diseased tree removal on private property.
§ 114-3.	Duties and responsibilities.	§ 114-9.	Violations and penalties.
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§ 114-5.	Permit required	§ 114-11.	Appeals.
§ 114-5.1.	Protection of trees on town property during construction.	§ 114-12	Minimum tree density on private property.
§ 114-5.2.	Line trees.	§ 114-13	Maintenance of trees.
§ 114-6.	Public tree care.		

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[HISTORY: Adopted by the Commissioners of the Town of Henlopen Acres 6-9-2017.¹ Amendments noted where applicable.]

GENERAL REFERENCES

§ 114-1. Intent.

Canopy trees and Town vegetation, as hereinafter defined, are declared to be beneficial public resources that are critical to the health and welfare of the community and the unique character of the Town. To that end, it shall be unlawful to cut down, damage, poison or in any other manner destroy or cause to be destroyed any trees or town vegetation covered by this chapter, except in accordance with the provisions of this chapter.

§ 114-2. Tree committee.

There is hereby created and established a Town Tree Committee for the Town of Henlopen Acres, Delaware, which shall consist of the Mayor, Planning Commission Chairman and a minimum of three (3), but not more than five (5), at-large members appointed by the Mayor and approved by the Board of Commissioners. The at-large members shall serve three-year terms.

§ 114-3. Duties and responsibilities.

It shall be the responsibility of the Tree Committee to study, investigate, counsel and develop a plan for the care, preservation, pruning, planting, replanting, removal or disposition of Town vegetation, as hereinafter defined. Such plan will be presented annually to the Board of Commissioners as part of the Town's Annual Budget meeting and, upon approval or modification by the Board of Commissioners, shall constitute the official Town Tree Plan for that budget year. The Tree Committee, when requested by the Board of Commissioners, shall consider, investigate, make findings, report and recommend upon any special matter, or question coming within the scope of its work. The Board of Commissioners shall have the right to review the actions and decisions of the Town Tree Committee.

§ 114-4. Definitions.

For the purpose of this chapter, certain terms are defined as follows:

APPROVED TREE LIST – The list of tree species approved by the Commissioners of Henlopen Acres, as adopted by resolution and maintained by the Town Manager.

CANOPY TREE – A tree that normally grows to a mature height of thirty (30) or more feet whose branches and foliage create substantial shade underneath. Includes large deciduous trees such as oaks, maples, beech, hickory, sycamore, and tulip poplar trees, but also includes certain tall evergreens such as loblolly pines as outlined on the Town of Henlopen Acres Approved Tree List.

DBH – Diameter at breast height (DBH) is a standard method of measuring the diameter of the trunk of a mature tree. DBH is measured at four (4) feet, six (6) inches above the ground, in accordance with the International Society of Arboriculture (ISA) standards.

DRIP LINE — The area directly located under the outer circumference of the tree branches. This definition also applies to the terms "critical root zone" and "root protection zone."**[Added 7-12-2019]**

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INVASIVE SPECIES — An alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health, as included on the Delaware Department of Natural Resources and Environmental Control list.

LAND CLEARING — The clearing of or removal from a parcel of land of all or part of the natural elements existing thereon, including, but not limited to, trees.

LINE TREE — A tree with any part of its trunk below DBH (i.e. four (4) feet six (6) inches above the ground) sitting across a property line.

MATURE CANOPY TREE – A Mature Canopy Tree is a Canopy Tree with a trunk diameter of sixteen inches (16") DBH or greater, measured in accordance with International Society of Arboriculture (ISA) standards. A Mature Canopy Tree is considered established and contributing to the Town's tree canopy and may not be removed except as provided in this chapter.

PERSON — Any individual, partnership, corporation, association or other legal entity, including the plural as well as the singular, and including all tree removal companies and persons removing trees on behalf of others.

PROTECTED TREE – Any tree, including Protected Public Trees, Protected Canopy Trees on Private Property, or other trees specifically identified for preservation on an approved Tree Plan and any tree required to be planted as replacement or mitigation under this Chapter. Protected Trees may not be trimmed, topped, damaged, or removed except in accordance with the provisions of this chapter.

PROTECTED PUBLIC TREES — Any tree on Town property (including public rights-of-way, parks and easements) or United States Army Corps of Engineers (USACE) property. Protected Public Trees may not be trimmed, topped, otherwise damaged or removed without a permit obtained from the Town in advance of the work. Additionally, a permit from USACE must be obtained to remove any Protected Public Tree from USACE property.

PROTECTED CANOPY TREE ON PRIVATE PROPERTY – Any Canopy Tree located anywhere on private property, regardless of yard or setback location, with a trunk diameter of six inches (6") DBH or greater, excluding ornamental or understory tree species. Such trees may not be severely cut back, topped, damaged, or removed without first obtaining a permit from the Town. Tree removal associated with an approved building permit shall be authorized only when shown on a Tree Plan reviewed and approved by the Town.

REMOVE or REMOVAL — The actual removal of a tree by digging up, cutting down or the effective removal through damage.

TREE PLAN – A drawing or written document submitted with a building permit application that identifies existing, retained, and proposed trees on a lot, including location, species, size, condition, and any trees proposed for removal or planting, prepared in accordance with §114-12.

TOWN — Any one, or combination thereof, of the following: Town Manager (or his or her authorized delegate), Zoning Officer, Environmental Approval Committee, Tree Committee, the Town's designated ISA Arborist. **[Added 7-12-2019]**

TOWN VEGETATION — Trees, shrubs, bushes and all other woody vegetation in public rights-of-way, parks, marina and any other parcel owned by the Town.

TREE – A self-supporting woody perennial species, normally recognized as a tree (such as oak, pine, beech, maple, or magnolia), that develops a distinct crown and typically grows to a mature height of ten (10) feet or more. Measurements and classifications of trees shall follow International Society of Arboriculture (ISA) standards.

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§ 114-5. Permit required.

- A. It shall be a violation of this chapter for any person to remove or damage any Town vegetation and any Protected Canopy Tree on Private Property without first obtaining a permit from the Town. Notwithstanding the foregoing, the Town retains the right to remove a tree from any Town property.
- B. Except as may otherwise be provided in Town ordinances or other law, it shall be unlawful for any person to clear, remove, or damage trees, shrubs, or other vegetation on any lot for the purpose of, or in anticipation of, the sale, redevelopment, demolition, or construction of any structure without first obtaining a zoning certificate as required by §130-37A of the Zoning Code of the Town of Henlopen Acres. Routine landscape maintenance, mowing, and pruning of ornamental vegetation are not considered land clearing under this provision.
- C. A property owner seeking to remove a Protected Canopy Tree on Private Property shall first obtain a Tree Removal Permit from the Town. The application shall be submitted to the Town Manager and accompanied by the fee established from time to time by resolution of the Commissioners of Henlopen Acres. The application shall identify the tree or trees proposed for removal, including their location, species, approximate diameter at breast height (DBH), approximate height, condition, and reason for removal. The Town may require supporting photographs, a site sketch, and/or a site survey showing the location of each tree relative to structures or lot lines at the discretion of the Town Manager. The Town Manager shall approve or deny the request based on the standards set forth in § 114-12(C).

For new construction or for renovations that would increase the footprint of a structure in excess of 400 square feet, the applicant shall submit a Tree Plan based on a current formal site survey prepared by a licensed surveyor. The Tree Plan shall identify all existing Canopy Trees, those proposed for removal, and any proposed replacement plantings as required under § 114-12. Tree removals associated with an approved building permit shall comply with the minimum canopy-tree density requirements in § 114-12.

For all tree-removal requests not associated with new construction or renovations, when the removal of a tree covered by this chapter will not reduce the tree density on the lot below the minimum tree density required under § 114-12, the Town Manager shall approve the permit upon receipt of a complete application.

Property owners are encouraged to retain healthy Canopy Trees and Mature Canopy Trees whenever feasible.

- D. No tree removal shall begin until the permit has been issued and a copy of the permit is conspicuously posted on the property for public awareness. The posting shall remain in place for the duration of the work or 10 days, whichever is longer.
- E. When the removal of a Canopy Tree or a Mature Canopy Tree is approved, the property owner is encouraged to plant a replacement Canopy Tree from the Town's approved tree list during the next appropriate planting season. The Town Manager may require replacement or other mitigation as a condition of the permit when necessary to maintain minimum canopy coverage under §114-12.

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- F. For good cause shown, including emergency removal, the Town Manager may waive the need for a permit or any provision of this chapter.

§ 114-5.1. Protection of trees during construction. [Added 7-12-2019]

All Protected Public Trees, Protected Canopy Trees on Private Property, and existing trees retained to meet the tree density requirements of §114-12 that are located on, along, or adjacent to a permitted construction site, including any trees on neighboring property whose roots, trunks, or drip lines (the outermost circumference of a tree's canopy projected vertically to the ground, or such greater area as may be determined by the Town Manager to protect the critical root zone) extend into the property being developed, shall be protected during construction and shall be subject to the following provisions.

- A. No person shall encroach or place solvents; temporary storage units; trash dumpsters; construction materials, equipment, trailers or machinery; or temporary soil deposits within 1/2 the distance between the drip line and the trunk of any Protected Tree, but no less than 10 feet from the trunk of any protected tree; or such other distance as determined by the Town in writing.
- B. Before any development, land clearing, filling, or other land-disturbing activity, the contractor shall erect suitable protective barriers around the base of all Protected Trees as required by the Town. Protective barriers shall be installed at the limit defined in subsection (A) and shall remain in place for the duration of construction unless otherwise approved in writing by the Town Manager.
- C. Protective barriers shall consist of chain-link fencing, orange laminated plastic fencing, wooden post-and-rail fencing, or other equivalent durable restraining material securely supported by metal T-posts or wooden stakes spaced not more than eight (8) feet apart and at least four (4) feet high. Each tree to be retained shall also be marked at the base of the trunk with blue, water-based paint. Barriers shall remain in place and be maintained in good condition for the duration of construction and shall not be removed until written authorization is given by the Town or a final certificate of occupancy has been issued. No grading, trenching, soil storage, parking, or placement of equipment, materials, or waste shall occur within the protected area.
- D. Any Protected Tree which is damaged during construction or because of construction, as determined by the Town, shall be treated in accordance with accepted American National Standards Institute (ANSI) standards or replaced by those responsible for the damage with a tree or trees equal to the caliper value of the damaged tree.
- E. Failure to comply with the tree protection requirements of this section may result in the issuance of a stop-work order for all permitted work.

§ 114-5.2. Line trees.

Line trees shall be subject to the following provisions:

- A. When a Line Tree straddles private property lines, both property owners own the tree and share responsibility for it. When applying for a permit to severely cut back, top, or otherwise remove a Protected Canopy Tree that is also a Line Tree, all owners of the tree must indicate their support for the application in writing.
- B. When a Line Tree straddles Town and private property lines, the tree is considered a Town tree.

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- C. Bridle paths are easements on private property that belong to individual property owners. Therefore, trees that straddle the bridle path are not Town trees and may require removal if they impede access by those authorized to use bridle paths, as provided for under § 42.

§ 114-6. Public tree care.

The Town, in its discretion, will plant, maintain, and remove Town vegetation as may be necessary to ensure public safety and preserve or enhance the tree canopy and the beauty of public grounds.

§ 114-7. Pruning; corner clearance.

Owners, occupiers, and agents of such owners or occupiers shall maintain trees and shrubs on their private property such that they do not interfere with the proper spread of light along the street from a streetlight or interfere with visibility of any traffic control device or sign. Failure to do so shall constitute a "nuisance" for purposes of § C-28 of the Town Charter.

§ 114-8. Dead or diseased tree removal on private property.

Owners, occupiers, and agents of such owners or occupiers shall remove any dead or diseased trees on their private property when such trees constitute a hazard to life and property or harbor insects or disease which constitutes a potential threat to other trees within the Town. Failure to do so shall constitute a "nuisance" for purposes of § C-28 of the Town Charter. A permit will be obtained from the Town for such removal when the tree is a Canopy Tree, as prescribed in § 114-4.

§ 114-9. Violations and penalties.

- A. Any violation of any provision of this chapter is declared to be a civil offense and is subject to the voluntary assessment and other procedures described in Chapter 55 of this Code. Any person, including but not limited to, the owner, agent, architect, contractor, or any other person who commits, takes part, or assists in any such violation shall pay a civil assessment of \$750. When the violation involves illegal tree damage or removal, the civil assessment will be applied on a per tree basis. Each day any violation of this chapter occurs or continues to exist shall constitute a separate violation and may be subject to a separate civil assessment.
[Amended 7-12-2019]

- (1) Additional assessment for illegal tree damage or removal of Protected Public Trees. In addition to the penalties and assessments provided herein, any person who damages or removes a Protected Public Trees in violation of any provision of this chapter shall forfeit and pay to the Town a civil assessment equal to the total value of those trees illegally damaged or removed, as computed from the International Society of Arboriculture shade tree value formula.
- (2) Additional assessment for illegal tree damage or removal of Canopy Trees. In addition to the penalties and assessments provided herein, any person who damages or removes a protected tree or trees on private property in violation of any provision of this chapter shall forfeit and pay to the Town a civil assessment equal to \$2,000 per tree or the ISA-calculated value, whichever is greater. Any Canopy Tree removed shall be replaced by the planting of a new Canopy Tree, and that new tree maintained.
- (3) Said sums of assessments collected shall accrue to the Town and may be recovered in a civil action brought by the Town. Said sums so collected shall be placed in a special fund

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and shall be expended for the purchase of tree(s) for placement in public properties in the Town. Replacement of illegally removed or damaged Canopy Trees may be required as restoration in lieu of monetary assessment. A combination of monetary assessment and tree replacement may be required.

- B. A violation of any provision of this chapter shall be deemed a nuisance and may be abated in the same manner provided by the Town for the abatement of any other nuisance in addition to the provisions of this chapter. In addition to any other remedy provided by law, an appropriate legal proceeding, whether by legal process or otherwise, may be instituted or taken to prevent action, construction, planting, removal, or use, or to restrain, or correct, or abate such violation to prevent any act, conduct or use contrary to the terms of this chapter.
- C. Order for Compliance.
 - (1) Public property encroachments. Upon failure, neglect, or refusal of any owner, occupier, or agent of such an owner or occupier to comply with the requirements of this chapter within 10 days after receipt of written notice sent by certified mail or registered mail, the Town Manager is authorized to remove, prune, or otherwise remedy public property encroachments.
 - (2) Private property violations. Upon failure, neglect, or refusal of any owner, occupier, or agent of such an owner or occupier to comply with the requirements of this chapter within 60 days after receipt of written notice sent by certified mail or registered mail, the Town Manager is authorized to remove, prune, or otherwise remedy violations of this chapter on private property. Non-compliance with § 114-5.1 must be corrected within 24 hours of written notice.
- D. Whenever the Town effects a removal or pruning, or enforces compliance with the terms of this chapter, pursuant to the provisions of this chapter, the actual cost thereof, together with an additional charge of 20% of the actual charge to defray administrative expenses, along with the Town's related costs and expenses, including its attorneys' fees, together with accrued interest at the rate of 6% per annum from the date of completion of the work by the Town, shall be charged to the owner or occupier of such property, and the Town may proceed to collect the same as it would any other obligation due the Town.
- E. If a violation of this chapter, including illegal tree damage or removal, is committed by an individual or entity with a Town business license or a Town rental license, then, in addition to the other penalties and assessments provided herein, the business license or rental license may be revoked for a period of up to two years.

§ 114-10. Withholding of certificates of occupancy or permits.

The Town Manager may withhold the issuance of the required certificate of occupancy, permits and inspections, on any development as required until the provisions of this chapter are met.

§ 114-11. Appeals.

Any person aggrieved by a decision of the Town Manager to deny or grant a permit for removal of a Protected Tree may appeal to the Board of Adjustments. A written notice of appeal must be filed with the Town Manager within 30 days of the decision which is the subject of the appeal. The written notice of appeal should include a general statement of the grounds for appeal. The decision

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of the Town Manager to grant a permit for removal of a Protected Tree shall be stayed upon the filing of an appeal. The decision of the Town Manager to deny a permit for removal of Protected Tree shall not be stayed upon the filing of an appeal, and the decision shall continue to be operational unless reversed by the Commissioners.

§ 114-12. Minimum tree density on private property. [Added 11-8-2019; amended 7-8-2022]

Recognizing that a mature tree canopy is a unique and signature feature of Henlopen Acres, and that building construction poses a significant risk of loss of existing Canopy Trees on private property and loss of privacy to neighboring lots, this section shall apply to any person who submits a building permit application to:

- 1) To construct a new home on a lot;
- 2) Perform a renovation including a change in footprint in excess of 400 square feet;
- 3) Perform renovations that require removal of any Protected Tree ; or
4. During construction, otherwise substantially damage or cause to be removed any Protected Tree located on private property, including Line Trees and trees on adjacent lots whose roots, trunks, or drip lines extend into the property being developed, except for Protected Public Trees regulated under §§114-5 and 114-5.1 of this Code.

When this section is applicable, the application for a building permit must include a tree plan that includes the following information:

- 1) The number of existing trees on the lot before construction, with the location, species, health, and size of each tree;
- 2) The proposed number of trees to be retained, with the location, species, health, and size of each tree;
- 3) The proposed number of trees to be removed, with the location, species, health, and size of each tree, and the reason for removal; and
- 4) The proposed number of trees to be planted after construction in the landscape plan, with the location, species, and size of each new tree.

Any person submitting a building permit application covered by this ordinance must meet the following minimum tree density requirements post-construction:

- A. Each lot shall contain at least one (1) Canopy Tree per 2,000 square feet of lot area, referred to as the minimum tree density. When the calculation of minimum tree density results in a fractional number, that fractional number shall be increased to the next highest whole number if it equals 0.5 or greater.
- B. Existing Canopy Trees on the lot that are designated to remain and that measure at least three (3) inches in caliper and eight (8) feet in height and are of a species listed on the Town's Approved Tree List, shall be counted toward the minimum density. A tree shall not be counted as a Mature Canopy Tree unless it measures at least sixteen (16) inches DBH. Trees located within the Town right-of-way shall not be counted toward minimum density on private lots.

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- C. The property owner must satisfy at least fifty percent (50%) of the minimum tree density by maintaining existing Mature Canopy Trees on the lot, except to the extent the owner demonstrates to the Town Manager that doing so is infeasible because the number of such trees is less than the minimum required, or that certain of such trees are unsuitable for retention due to one or more of the following criteria:
- (1) The tree is an invasive species, as included on the Delaware Department of Natural Resources and Environmental Control (DNREC) list, or is an otherwise undesirable species that is not on the Town's Approved Tree List;
 - (2) The tree is dead, dying, diseased, substantially damaged, or disfigured by wind, storm, or other causes to such an extent that it poses a likely risk of failure or harm to nearby trees, persons, or property, as documented in a formal assessment completed by an ISA Certified Arborist. When the condition of the tree is evident, the Town Manager may, at his or her discretion, accept direct observation or inspection and an informal concurrence by the Town's arborist in lieu of a formal arborist's report.
 - (3) The tree is in the way of a permitted driveway or utilities or any part of the tree's trunk below DBH (i.e. four feet six inches above the ground) is within fifteen (15) feet of the permitted dwelling; and
 - (4) The Town Manager may grant a waiver or adjustment to the minimum tree density requirements when strict compliance is determined to be infeasible or inadvisable due to lot size, existing structures, utility or drainage constraints, growing conditions in specific locations or the presence of significant existing specimen trees that limit available planting area. Any such waiver or adjustment shall be documented in writing and included in the approved Tree Plan.
- D. To safeguard the existing Canopy Trees that are being maintained during construction, the contractor will be required to obtain, as part of the building/zoning permit, a surety bond on each canopy tree being retained from an insurer admitted to sell insurance in the State of Delaware, with the insured value of the bond based on the value of the tree as computed from the International Society of Arboriculture shade tree value formula. The bond shall remain in effect for three (3) years following issuance of the Certificate of Occupancy.
- E. Any newly planted trees will be selected from the Town's Approved Tree List.
- F. Trees shall be planted as soon as practicable following construction completion, considering appropriate planting seasons.

§ 114-13. Maintenance of trees.

- A. Property owners shall maintain all Canopy Trees on their lots in a healthy condition and in an orderly appearance, free of refuse and debris. Trees shall be trimmed as necessary to promote uniform, healthy growth and to allow each tree to attain its natural size and form. Canopy Trees shall be pruned to remove dead, dying, or diseased portions, and climbing vines shall be removed. Lower limbs and suckers may be selectively removed to provide clearance for pedestrians and vehicles and to comply with § 114-7. Routine pruning and maintenance performed in accordance with ANSI A300 standards shall not constitute damage under § 114-5(A) and shall not require a permit.

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- B. Canopy Trees planted following removal of a tree under § 114-5 shall be planted at the earliest practicable opportunity, considering appropriate planting seasons. The Town Manager or designee shall verify that the required replacement planting has been completed.
- C. With respect to Canopy Trees retained or newly planted pursuant to a property owner's approved Tree Plan following construction under § 114-12:
 - 1) The property owner shall permit on-site inspection by the Town Manager or designee of each Canopy Tree planted or retained before a Certificate of Occupancy is issued and again six (6) months after issuance. Additional inspections may be conducted thereafter as determined necessary by the Town.
 - 2) If a Canopy Tree is determined to be dead, dying, diseased, or otherwise not in compliance with this Code or the approved Tree Plan, the property owner shall be notified and required to replace it within sixty (60) days, or within a longer period approved by the Town Manager based on planting seasons. Replacement trees shall be selected from the Town's Approved Tree List and meet the standards of §114-12.